

OFFICE OF THE POLICE COMMISSIONER
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July 23, 2013

Memorandum for: Deputy Commissioner Trials

Re: **Detective Salvatore Bellomo**
Tax Registry No. 897015
Staten Island District Attorney Squad
Disciplinary Case No. 2011-4135

The above named member of the service appeared before Deputy Commissioner Martin G. Karopkin on April 4, 2013 and was charged with the following:

DISCIPLINARY CASE NO. 2011-4135

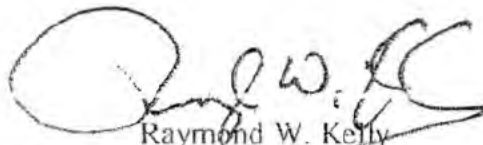
1. Said Detective Salvatore Bellomo, assigned to the Staten Island District Attorney Squad, on or about January 28, 2011, in Richmond County, while on-duty, did discharge his firearm outside Department guidelines.

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DEADLY PHYSICAL FORCE

In a Memorandum dated June 3, 2013, Deputy Commissioner Martin G. Karopkin found Detective Bellomo Not Guilty of Specification No. 1 in Disciplinary Case No. 2011-4135. Having read the Memorandum and analyzed the facts of this matter, I disapprove the Not Guilty findings.

I have determined that Detective Bellomo is Guilty of Specification No. 1 in Disciplinary Case No. 2011-4135. Detective Bellomo shall forfeit thirty (30) vacation days, as a disciplinary penalty.


Raymond W. Kelly
Police Commissioner



POLICE DEPARTMENT

June 3, 2013

MEMORANDUM FOR: Police Commissioner

Re: Detective Salvatore Bellomo
Tax Registry No. 897015
Staten Island District Attorney Squad
Disciplinary Case No. 2011-4135

The above-named member of the Department appeared before me on April 4, 2013 and May 8, 2013, charged with the following:

1. Said Detective Salvatore Bellomo, assigned to the Staten Island District Attorney's Squad, on or about January 28, 2011, in Richmond County, while on-duty, did discharge his firearm outside Department guidelines.

P.G. 203-12, Page 1 DEADLY PHYSICAL FORCE

The Department was represented by Vivian Joo, Esq., Department Advocate's Office, and Respondent was represented by James Moschella, Esq.

Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent is found Not Guilty.

SUMMARY OF EVIDENCE PRESENTEDThe Department's Case

The Department called Detective Trevor Bosco, Sergeant Sally Spinosa and Frank Cosentino.

Detective Trevor Bosco

Detective Trevor Bosco, a 17 year member of the Department, is currently assigned to the Technical Assistance and Response Unit (TARU). Bosco has been assigned to TARU for approximately seven years. Bosco's duty is to download video evidence. There are two methods that they employ to download video. One method is to extract the video directly from the machine itself and put it on a USB or disc. The second method is used if the machine is not working properly: they attach an external device to it which records what is on the machine. Bosco has recovered surveillance from video hundreds of times.

On January 28, 2011, at approximately 4: 30 p.m., Bosco responded to the location of 923 Manor Road in Staten Island and recovered video surveillance regarding events that took place at the parking lot of 923 Manor Road on January 28, 2011, at 1:40 p.m. Bosco reviewed the images prior to recording it onto a compact disc (CD). The Department offered the CD in evidence (Department's Exhibit [DX] 1).

On cross-examination, Bosco did not recall if the time on the video was fast or not. Bosco was not present during the actual events in question, and he did not know if what happened on that particular date was accurately depicted.

Upon questioning by the Court, Bosco confirmed that the time stamp on the video might have been different from the actual time, but the video functioned at a normal speed.

Sergeant Sally Spinosa

Spinosa, a 27 year member of the Department, is currently assigned to the Patrol Borough Staten Island (PBSI) Investigations Unit. Spinosa investigates misconduct and firearm discharge cases. On January 28, 2011, Spinosa was assigned to handle a firearm discharge case involving Respondent on January 28, 2011, at approximately 1:25 p.m., in front of 927 Manor Road, Staten Island. Respondent's command was at the Staten Island District Attorney's Office.

Spinosa interviewed five civilian witnesses, Respondent, his partner Detective Greco, various members of the service who responded to the scene, and the two perpetrators: Person A and Frank Cosentino. Person A was 26 years old. Cosentino was 18 years old. None of the civilian witnesses that she interviewed observed Respondent discharge his firearm. In conducting her investigation, she reviewed a crime scene sketch, complaint form, online booking form, property clerk invoices, supervisor's fitness for duty report, firearm discharge assault report, aided card, line of duty report, various photos, and the video.

The Department placed six photographs into evidence collectively as DX 2. DX 2A and 2B are photographs of the vehicle that Person A was driving. A close-up of the windshield is photographed in DX 2C. A photograph of the strip mall from across the street is DX 2D. DX 2E is a photograph of four cups containing the shell casings recovered from the incident scene. Another photograph depicting a closer view of the strip mall is DX 2F.

Spinosa testified that Respondent and Greco were present at 927 Manor Road due to a confidential investigation. Respondent and Greco were in a Honda Element vehicle

when they observed two males, Person A and Cosentino, exiting a barbershop and entering a vehicle. They observed Person A and Cosentino sitting in the vehicle, handling pills.

Person A was in the driver's seat, and Cosentino was in the passenger seat. Respondent told Greco that he thought it was a drug transaction, so they exited their vehicle.

Respondent went to the driver's side of the vehicle, while Greco went to the passenger side of the vehicle. Respondent had his 9 mm Department authorized firearm in his right hand, and his shield on his belt, which was visible. Respondent knocked on the window of the passenger¹ side with his firearm, and instructed him to roll down the window.

Person A placed the vehicle in reverse and moved the vehicle backward. Spinosa testified that Respondent told her that he believed that Greco's hand was stuck in the passenger side window, and that he was going to be dragged by the vehicle. Person A then placed the vehicle in drive. Spinosa determined that Respondent went to the front of the vehicle and discharged one round towards the driver's side windshield, then paused, and shot three more rounds through the windshield. Person A was struck by the bullet on the right side of his head and on his right forearm. The vehicle then left the parking mall.

Greco informed Spinosa that he was not dragged but that he was attempting to break the passenger side window with his firearm. Spinosa determined that Respondent's firearm discharge was not within Department guidelines in that officers are not allowed to discharge their firearms at a moving vehicle unless deadly physical force is being used against them or someone else using means other than the moving vehicle. When asked to define the terms "cover and concealment," Spinosa explained that "cover" meant to take cover behind something that is not going to totally cover one's body, such as a mailbox or

¹

This is an error in the trial transcript; all of the evidence indicates that Respondent went to the driver's side where Person A was seated.

fire hydrant. She explained that "concealment" is when your whole body is covered, such as being behind a building or a vehicle. On that day, both cover and concealment were available to Respondent in that there were parked vehicles and buildings available. Respondent, she said, could have let Person A drive away and put a description of the vehicle over the radio.

On cross examination, Spinosa testified that she responded to the scene on the date of the incident. She observed all of the physical evidence and ballistics at the scene, and determined that there were four rounds discharged from Respondent's firearm. Only Person A was struck by the bullets.

Respondent informed Spinosa that he had discharged the firearm at the driver. Respondent never aimed any rounds at Cosentino. There were no criminal charges filed against Respondent by the Staten Island District Attorney's Office. The evening of the shooting, Spinosa interviewed Person A at the hospital. Person A's injuries were never life-threatening.

Person A went to the barbershop in the strip mall to purchase 70 pills of OxyContin.² Person A then went to a white Hyundai Sonata. Person A told Spinosa that Cosentino had waited in the Hyundai while he went inside of the barbershop to purchase narcotics. But, according to Respondent and Greco, that was not true. From viewing the videotape, Spinosa observed that Person A and Cosentino exited the barbershop together. Person A clearly lied to Spinosa during his interview. Person A admitted that Respondent had tapped

²

Both parties stipulated to the following: 50 pills and a glass vial filled with white powder were recovered from the Hyundai Sonata. After analysis, 43 of the 50 tablets were determined to be Oxycodone (DX 4 is a Property Clerk Invoice, and a laboratory report from the Department's Controlled Substance Analysis Section). The white powder in the glass vial was determined to be Ketamine (DX 3 is a copy of the laboratory report from the Department's Controlled Substance Analysis Section). In Spinosa's report, Person A admitted to using the Ketamine prior to the actual incident. It was further stipulated that Person A was convicted, after a jury trial, of Assault in the Second Degree and Criminal Possession of a Controlled Substance in the Fourth Degree, and was sentenced to five years.

his window, the driver's side, and told him that he was the police. Spinosa said that Person A was aware that Respondent and his partner were the police, and still decided to reverse his vehicle and back out of the parking space.

From the video, Spinosa observed that Greco was moving backwards with the car as it was backing out of the space. It was Respondent's belief that Greco was being dragged by the vehicle, and because of that, he discharged his firearm as the vehicle was about to move forward.

Spinosa testified that she believed that Respondent could have gone into one of the stores or jumped behind another vehicle to seek cover or concealment, which would have protected his own life. Spinosa was asked what would have Respondent jumping behind a car done to protect Greco's life if Greco was indeed being dragged by the car, to which Spinosa responded that that action would have done "nothing" to protect Greco's life.

From her interviews of Greco and Respondent, Spinosa testified that there were no indications that Greco and Respondent had an opportunity to say anything to one another as the incident was unfolding. Greco informed Spinosa that he was running alongside the vehicle and his hand was not stuck.

On redirect examination, Spinosa testified that she observed Greco to be running alongside the vehicle, trying to bang on the window with his firearm, as the vehicle was moving in reverse. In the official Department interview, Respondent informed Spinosa that he had discharged his firearm because he believed that Greco was being dragged by the car. When asked if, under those circumstances, Respondent had discharged his firearm outside of Department guidelines, Spinosa said, "Yes."

Frank Cosentino

Cosentino is currently twenty years old and works as a waiter. On January 28, 2011, Cosentino was eighteen years old. At approximately 1:30 p.m., he was en route to a barbershop on Manor Road in Richmond County with his friend, Person A was driving Cosentino's father's car, a 2011 Hyundai Sonata, while Cosentino sat in the passenger seat. Cosentino had been friends with Person A for several years through mutual friends. Person A is currently 27 years old.

Cosentino and Person A were going to the barbershop to buy Percocet pills. They went into the barbershop and Person A purchased the pills. When they exited the barbershop, Person A entered the driver's side of the Hyundai, and Cosentino got into the passenger seat. Person A had the pills on his lap and he was counting them. The windows and doors of the Hyundai were closed.

A few minutes passed and Cosentino heard a "ticking" against the window, and he claimed that he then saw a gun against the window on the driver's side. Cosentino did not see the person's face, nor did he see a shield on the person who was on Person A's side of the vehicle. Cosentino saw this person wearing civilian clothes. Cosentino did not hear this person or anyone else say anything, such as "police." The car, Cosentino said, was already in reverse and then it rolled backwards. Cosentino observed someone, who was wearing "normal clothes" and possibly a hat, on his side of the car. Cosentino did not hear that person say anything. Cosentino did not realize that these two individuals, one on Person A's side and one on his side, were police officers while they were in the parking lot. Cosentino realized they were police officers as he and Person A were driving to Forest Hill Road. The vehicle in which Cosentino was traveling did not strike anyone. The individual

on Cosentino's side appeared to be rushing towards the car and hitting the window with a weapon. The window did not break at that point. The windows and doors were still closed.

They exited the parking lot and drove down Manor Road and made a left onto a street. Cosentino looked over at Person A and observed blood on his arm and face. Cosentino's right elbow was bleeding. About a mile away, Person A pulled the vehicle over and got out of the car, not putting the car in park as it was still in motion. Someone appeared on the passenger's side of the vehicle with a weapon drawn and Cosentino put his hands up. Cosentino pushed the gear shift into park. The individual was trying to open the car door but the door was locked, and Cosentino pressed the unlock button. Cosentino "guess[ed]" that the person who was trying to open the door was a police officer. Cosentino did not think that that person was wearing a uniform.

After Cosentino was placed under arrest, he was taken to the hospital. Cosentino was interviewed by several police officers, including someone he believed to be from the Internal Affairs Bureau (IAB). In his testimony at this proceeding, Cosentino acknowledged that he might have said something slightly different and minimized certain things during the interview, as it was very scary. Cosentino had no weapons on him on January 28, 2011. Cosentino did not observe Person A to have any weapons on him that day. Cosentino suffered some slight abrasions on his right elbow.

On cross examination, Cosentino testified that he was aware that Person A had bought pills but was not aware that he sold pills prior to January 28, 2011. On January 28, 2011, Cosentino was aware that he was going to be involved in the purchase of illegal narcotics. Cosentino testified that Person A had asked him to accompany him to the

barbershop on Manor Road in order for him to buy pills. Cosentino allowed him to use his vehicle to go to the location to buy pills. Cosentino accompanied Person A when he bought the pills. Cosentino [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Cosentino admitted that he lied to the police when they interviewed him, but “[n]ot intentionally.” Cosentino agreed that he tried to minimize his role in the purchase of the pills that day. Instead of telling the investigators that he went into the barbershop with Person A, he told them that he went into a deli by himself to buy water. Cosentino acknowledged that he never went into the deli that day. Cosentino was aware that there was a videotape which showed him exiting the barbershop with Person A. Cosentino had told the police investigators that he got into the car and attempted to exit the parking lot right away, but in fact, he was sitting in the car for several minutes counting the pills, prior to Respondent and Greco approaching the car.

Cosentino did not see where Respondent and Greco came from prior to them knocking on the window. Cosentino was not aware that the detectives who approached the car were sitting less than one foot from his vehicle. Cosentino said he might have seen a person get out of a car but did not know if that could be the same person who approached their car. Cosentino testified that he and Person A were listening to the radio at a high volume but they were not “blasting” the radio. During an interview with police investigators, Cosentino informed them that they were blasting the radio, but that he still distinctly heard the tapping on the window. Cosentino agreed that, whether the radio was

at half or full volume, he heard the tapping. While Person A was counting the pills on his lap with the music playing and the windows closed, Cosentino heard a tapping. Cosentino agreed that it was possible that he did not hear Respondent announce that he was a police officer. The view of the police officer at the driver's side was partially blocked from Cosentino's vantage point from the passenger seat. Cosentino had a "very small" view of the police officer at the driver's side, but he did see a firearm in his hand. Cosentino said that if the officer had a shield around his neck, Cosentino did not see it. While Cosentino and Person A were sitting in the car in the parking lot, Cosentino was not aware that the person standing near the car was a police officer. After Cosentino and Person A drove off, they had an idea that the individuals by the car were police.

Cosentino had told the police investigators³ that even though he did not hear them say "police," he knew that it was the police who had been knocking on his car window. When one of the investigators asked Cosentino whether he knew the people in the parking lot were police, and that he knew he was in danger of getting locked up because they had drugs in the car, Cosentino replied in the affirmative. During his testimony at this trial, Cosentino claimed that he had said that because by the time he was interviewed, he had put it together that they had been police but that he did not know that when they were knocking on the window.

Cosentino testified that his initial fear was not of being arrested but that he had a gun pointed at him. Cosentino claimed it was a misstatement that he had told the investigators that they knew it was the police, and that is why Person A drove away.

³ Cosentino testified that the police who interviewed him were from IAB on the night of January 28, 2011. Spinosa, who was assigned to the PBSI Investigations Unit, testified that she interviewed him that night. The transcript of Cosentino's interview, dated January 28, 2011, was entered into evidence (RX A). Spinosa is identified as the interviewer; however, there were other male police investigators present who did not identify themselves.

Cosentino did not know why he made that statement but explained that his nerves were shattered, and it was the scariest day of his life. During his interview, Cosentino said that Person A “[threw] the car in reverse and hit the gas,” after the police knocked on the window. Cosentino testified that he remembered that the car went backwards, not speeding, but that it moved. At the trial, Cosentino could not say what the speed was but that it was not fast, and that he did not know if Person A switched gears as he did not see his hand on the shifter. Cosentino did not hear gunshots until after Person A had backed up and had either been stopped or started to drive forward.

Cosentino admitted that the reason that Person A pulled over on Forest Hill Road was because the police were behind them. The drugs that Person A had purchased were on the floor of his father’s car.

Respondent’s Case

Respondent called Detective Steven Greco. Respondent testified on his own behalf.

Detective Steven Greco

Greco, a 28-year member of the Department, is currently assigned to the Staten Island District Attorney’s Squad. Greco has been a detective for approximately 17 years. As a detective in the squad, Greco investigates cases that come into the District Attorney’s (DA) office. Prior to the DA’s squad, Greco was assigned to patrol, and various detective squads, including robbery, homicide, and intelligence. Respondent has been Greco’s partner for the past three to four years.

On January 28, 2011, Greco's partner was Respondent. They were sent to a strip mall on Manor Road. They were assisting the DA's office [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] In the strip mall, there was also a barbershop that was known to be a narcotics location. Respondent drove the undercover vehicle, which was a green Honda Element with windows that had medium tint, while Greco was the passenger. One could still see the outline of bodies through the tint. The parking lot was full and they had to wait to get a parking spot. They pulled into a spot where a white Hyundai Sonata was on their left, and, he believed, a white Toyota Camry was on the right. They had been planning on going into the bagel store and speaking to the owner about drug activity, but they never had a chance to go inside.

After Respondent parked the car, they observed two individuals, who are now known to him as Person A and Cosentino, walk out of the barbershop and enter the Hyundai Sonata. Person A got into the driver's seat and Cosentino got into the passenger seat.

Respondent informed Greco that he could see Person A and Cosentino doing a "hand-to-hand," which is a drug transaction, in the car. Greco then looked to his left, which was outside the driver's side window and, as he was sitting higher than Person A's car, he could see Person A's hand on his knee while counting out pills that were in white tissue paper. Greco and Respondent watched Person A and Cosentino for approximately 30-40 seconds. Greco and Respondent called the vice team and conferred with them on the telephone, and they all decided that Greco and Respondent would make the arrest as vice did not feel it

would jeopardize their case. When they exited the vehicle, Respondent went to the driver's side and Greco went to the passenger's side, which was what they would routinely do when Respondent was the driver, and part of their basic NYPD training. Greco was wearing blue jeans, brown boots, and a green colored Army fatigue jacket. Greco had his off-duty 9 mm pistol and shield with him. When Greco exited the car, he had his firearm drawn and placed alongside his right leg.

Greco had his firearm out as it had been his experience that when making a felony narcotics arrest, there are often weapons. Greco's shield was in a holder on his belt on his left-hand side.

Respondent approached the driver's side and tapped on the window, and said, "Police, roll down the window." Neither Person A nor Cosentino rolled down their windows. Respondent yelled again, "Police, roll down the window," at which time, Person A put the car in reverse and backed out from the parking place at a high rate of speed. As the car was backing out, Greco heard a thud, which he later learned was the car striking Respondent on his leg.

Once the car was backed out of the space, Greco tried to run alongside the car. In order to keep himself balanced as he was running backwards, Greco's left hand was on the roof of the car as he was banging on the front passenger-side window yelling, "Police, police, police." Respondent was positioning himself in front of the car. The car stopped for a moment, and Cosentino then waved his hand as if to motion to the driver to "go, go, go." During this entire time, Greco had been banging his hand on the window. Greco heard the car motor rev very loudly which made it seem as if the driver had the car in neutral, and then the car went forward at a high rate of speed. Greco was following the car

forward, with his hand still on the roof and still banging on the passenger window. From the time Person A reversed the car from the parking spot to the time he put the car in drive, only a few seconds had passed. During that time, Respondent and Greco did not have any conversation whatsoever. Respondent was standing in front of the car, with his firearm drawn, yelling "Police." The car was going towards Respondent and Greco was running forward, and then Respondent fired one gun shot, and three more shots in succession.

When Greco heard the gunshots, his hand was still on the roof of the car and he was still banging on the window yelling, "Police." The car was still coming towards Respondent, at which point, he dropped his firearm, and moved to the side of the vehicle, and the car fled out of the parking lot at a high rate speed. As the car exited the parking lot, the mirror of the car struck Respondent's left hand. The car made a right-hand turn onto Manor Road, and was weaving in and out of traffic heading towards Victory Boulevard. There were no other rounds that were discharged. Respondent was walking around the parking lot with a slight limp and he said he was in pain. Greco and a man who identified himself as an Army MP assisted in bringing Respondent to a place he could sit and rest his leg. Greco testified that he believed a "10-13" was broadcast over the radio for shots fired. Greco put over a description of the vehicle, the two occupants, and the direction in which the vehicle traveled.

An emergency medical technician checked Greco out. He said he had an elevated blood pressure and irregular heartbeat, so they brought him to the hospital for observation. After the car left the parking lot, Greco had no part in the apprehension of the vehicle and its occupants.

Greco testified in the Grand Jury and the criminal trial against Person A and Cosentino. Person A was found guilty and was sentenced to five years of prison.

On cross-examination, Greco testified that he had his shield on the left-hand side of his belt, opposite his firearm. Greco observed the transaction from the passenger seat of his vehicle. Their car was about two to three feet from Cosentino's car, and the windows and doors were closed. When the car went into reverse, Greco ran alongside the car in a backwards direction. The windows and doors were still shut. Greco began banging on the passenger side window with his firearm, while yelling "Police." Greco was trying to break the window to get to the passenger. The vehicle never struck Greco. Greco's hand was never stuck in the passenger side window. Greco was not dragged by the vehicle. During the incident, there was no conversation between Greco and Respondent. Greco never screamed for help. Neither Person A nor Cosentino displayed a gun or any type of weapon. Greco agreed that the only threat at that moment was the moving vehicle.

Respondent

Respondent, a 23-member of the Department, is currently assigned to the Staten Island District Attorney's Squad, where he has been assigned since about 2009. Respondent has been a detective for approximately 12-13 years. Respondent is a second-grade detective. As a detective in the squad, Respondent investigates all types of cases and assists the district attorneys in locating witnesses, as well as handling self-generated cases. Prior to the DA Squad, Respondent worked in the Narcotics Division as an investigator for 11 years. Respondent has never been the subject of any disciplinary action by the Department. Respondent has never discharged his firearm other than the incident at issue.

On January 28, 2011, Respondent was working with Greco as part of an assignment from the DA Squad. The DA's office [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Respondent was in plainclothes. Respondent drove a green Honda Element. The windows were not tinted at that time, but they were tinted after the incident at-issue. Respondent pulled into the parking lot and had to wait for a parking spot. Respondent pulled into a parking spot. Respondent then observed two males, whom he later identified as Person A and Cosentino, exiting a barbershop. Respondent observed what he believed to be Cosentino handing Person A something. When Person A and Cosentino got into the car, Respondent looked over and saw that Person A had a tissue in his hand and he was counting pills on his left knee. Respondent looked over at Greco and asked him if he could believe this, that they were doing a "hand-to-hand" right next to them.

Respondent called Detective Carlin to ask him exactly what he wanted them to do. While they were observing the hand-to-hand, Carlin returned his telephone call, and Respondent informed him that they were conducting a hand-to-hand right next to them. Respondent asked if an arrest was going to jeopardize the investigation, to which Carlin said no, and if they could make the arrest, they should. When Respondent hung up the phone, he told Greco that they should make the arrest.

In his career, Respondent has made close to 700-plus arrests that were mostly narcotics-related, and over 100 of those arrests took place when Respondent was stopped in a vehicle. Respondent showed Greco what was happening in the car next to them, and

Greco leaned over his lap and was looking at the drug transaction as well. They exited their vehicle, and Respondent went to the driver's side, while Greco went to the passenger's side. When Respondent was on patrol, he had learned that the driver of the radio motor patrol car (RMP) always went to the driver's side of the stopped car, while the passenger of the RMP went to the passenger's side. Respondent exited the vehicle and was standing right next to Cosentino who was sitting in his vehicle, only inches away. Respondent walked around the back of the car over to the driver's side of the car, while Greco went to the passenger's side of the car. Because they were so into their pills, it did not appear that Cosentino and Person A saw the detectives at all. Respondent did not hear any radio from the subject vehicle. The windows were closed. Respondent had a three-quarter coat on, which he unzipped. Respondent drew his weapon as he would not be able to get to it with his coat on if he needed it. Respondent approached and had his gun pointed down, parallel to the right side of his body. Respondent's shield was on his belt, right next to his gun. Respondent tapped the window with his gun and then immediately dropped his arm down, and stated, "Police roll down the window," as he was showing his shield. It appeared that Person A saw Respondent's shield as he "threw the car in reverse and jetted out of there." Respondent believed Person A had to see his shield as it was right on the front part of his belt. Respondent indicated that his shield was positioned just over where the car window would have been. Respondent testified that there was no way that Cosentino saw his gun as he tapped the window and then placed it right down to the side (Respondent demonstrated this action by extending his arm fully downward so the firearm would be out of view).

It appeared to Respondent that Person A looked at him. Respondent had said, "Police, roll down the window," two times in a "pretty loud" tone. Person A then looked at Cosentino, put the car in reverse, and started to fly backwards. As the car was moving backwards, Respondent saw what appeared to him to be Greco being dragged by the car. As the car was being driven in reverse, Respondent started to run backwards towards the front of the car to stop Person A from dragging Greco. As the car swung out from the parking spot, it clipped Respondent's leg. Respondent ran to the front of the car and yelled "Police, police." Greco was also yelling, "Police" as he was trying to break the window. Respondent believed that Greco's arm was stuck in the window. Respondent went to the front of the car and yelled, "[P]olice, don't move the car, don't move the car."

Respondent then heard the car rev loudly while it seemed to be in neutral. Respondent discharged his firearm. Respondent was afraid that the driver was going to take Greco on a ride down Manor Road on the side of his car. From his vantage point, Respondent observed Greco being dragged by the car. Respondent observed Greco trying to break the window with the gun that was in his right hand. It appeared to Respondent that Greco's left arm was stuck in the car, or that they were holding it in as Greco was trying to break the window. Only about two seconds elapsed from the time the car went into reverse to the time it was going forward. Respondent discharged only four rounds because the car had taken off. It appeared to Respondent that Greco was thrown off of the car.

When he was firing his gun, Respondent was aiming at the driver of the car, Person A, because he had control of the car and was the threat. Respondent did not see a firearm. Respondent never saw anyone reach for a weapon. Respondent's decision to

discharge his gun was based on Greco's safety. Greco was his partner and a 55-year old man, and Respondent did not want to see him get hurt. Although Sergeant Spinosa testified that Respondent had cover available by getting behind a car, Respondent said that that was ridiculous because had Respondent gotten cover, it would not have done anything for Greco if he would have been dragged down the street by the car.

Respondent was trained not to shoot at a motor vehicle. Respondent did not think that that rule applied to this incident because someone's safety was in danger.

As Person A was driving the car out of the parking lot in a forward direction, the car hit Respondent's left hand and brushed up against Respondent's knee. Respondent was taken to the Staten Island University Hospital.

When Respondent was working in Narcotics two or three years prior to this incident, he had his arm stuck in a perpetrator's car window, and Respondent had to punch the glass to free his arm, and he ended up breaking his hand. In that instance, Respondent never discharged his weapon. The difference between that situation and the situation here was that, while there were detectives in front of the perpetrator's car, he never put the car in drive and pulled away.

The car here drove out of the parking lot at a high rate of speed, and was racing through traffic. Respondent did not have any interaction with the occupants of that vehicle or that vehicle itself after the car left the parking lot. After the car left, Respondent saw everyone who had exited the barbershop and he told them not to leave. Respondent informed Greco that he was feeling pain in his legs. An Army medic came and assisted Respondent with Greco. They sat down, Greco put over a "10-13," and more police and an ambulance reported to the scene. Respondent later learned that the suspects were

apprehended. Respondent testified in a Supreme Court trial as to the prosecution of **Person A** and Cosentino. **Person A** was found guilty of second-degree assault, unlicensed operator of a motor vehicle, and criminal possession of a controlled substance. He was sentenced to five years in prison.

On cross examination, Respondent reiterated that he thought Greco's right hand was stuck in the passenger side window. Respondent did not hear Greco screaming for help or that he was in pain, but he was screaming "Police," as was Respondent. Respondent later learned that Greco was not being dragged by the subject vehicle. Respondent never saw the driver or passenger have a weapon. Respondent repeated that the threat at that time was that Greco was being dragged by a moving vehicle.

FINDINGS AND ANALYSIS

This trial was conducted over the course of two days. On the first day of this trial it appeared that the issue to be set forth by the Department was straightforward and clear. That is that what was being litigated was an apparent violation of the Patrol Guide wherein Respondent was alleged to have fired at a moving vehicle. The facts it seemed were generally not in dispute and were set forth in detail by the Assistant Department Advocate (Advocate) in her opening statement as follows:

On January 28, 2011 at about 1:23 p.m., the Respondent, Detective Salvatore Bellomo, and his partner, Detective Steven Greco, they were in a Honda Element parked in a parking lot of a shopping plaza on Manor Road in Staten Island. They were conducting a confidential investigation in the parked vehicle dressed in plain clothes.

There was a white Hyundai Sonata parked to the left of their vehicle. Two male individuals entered the white Hyundai Sonata, Person A, entered the driver's side of the vehicle; and Frank Cosentino, entered the passenger side of the vehicle.

The Respondent observed Person A in possession of pills, which were later revealed to be Oxycodone, in the vehicle. The Respondent and Detective Greco decided to stop Person A and Mr. Cosentino. Respondent approached the driver's side of the Hyundai Sonata where Person A was seated with his firearm drawn. Detective Greco approached the passenger, Frank Cosentino.

The Respondent banged on the driver's side window with his firearm, and it was at that point that Person A shifted the gear from park into reverse and backed out of the parking spot.

As the Hyundai Sonata was reversing, Detective Greco grabbed onto the roof of the passenger side of the vehicle and he ran backwards with the vehicle and banged on the passenger side window with his firearm in an attempt to smash the passenger side window.

Person A, after reversing out of the parking space, then shifted gears from reverse to park to drive, and as Person A shifted gears, the Respondent placed himself directly in front of the vehicle with his firearm drawn at the driver and Person A continued to drive. It was at that point Respondent fired four rounds shooting Person A on the right side of the head and his right forearm. Person A sustained a graze on the head, and it wasn't fatal injuries.

Detective Greco at that point called for backup as Person A fled the scene. Person A was apprehended several miles from the incident scene.

On the second day of trial, however, the Department called Cosentino as a witness. During his testimony he raised an issue that had not been mentioned at any point earlier in these proceedings. He claimed that neither Respondent nor his partner Greco adequately identified themselves and that he and Person A did not know, while they were in the parking lot, that Respondent and Greco were police officers.

Cosentino acknowledged that this was in conflict with statements he made to police investigators on the night of the incident. In that statement Cosentino first stated what he said at this trial; but later he acknowledged that he and Person A knew that Respondent and his partner were police officers at the time they heard tapping on the window.

Cosentino acknowledged that he went to the location to buy drugs with Person A. He acknowledged that he and Person A were in the car counting the pills just as Respondent and Greco reported. Cosentino acknowledged initially lying to the officers who were questioning him on the night of the incident when he said he did not go into the barbershop where the drugs were purchased but went instead to a deli. One of the most obvious lies Cosentino told was when he described the car as "rolling" backward. As can plainly be seen on the video the car sped backwards out of the parking space. It did not roll - it accelerated. Cosentino's testimony is simply not worthy of belief as he appears to say what he wants to say to suit the situation and his convenience.

Respondent testified that as he approached the vehicle he removed his firearm and held it down at his side so that it would not be plainly visible to the occupants of the vehicle. At the same time he pulled his jacket back to expose his shield which was on his belt, near what would be the front pocket area on his pants. He said the shield was at a height that would make it visible to the occupants of the car. He said that he tapped at the window with his firearm and then moved it back down to his side. Both Respondent and Greco testified that they loudly shouted, "Police" during the incident.

I accept this as credible for several reasons. The first is that Respondent is a long term member of this Department who has made a very high number of arrests, particularly for narcotics. He would be very aware how important, for safety reasons, it would be to let the persons he was about to arrest know that he is a police officer. Keeping his firearm out of sight would also be a significant safety factor as it would avoid panicking the occupants of the car.

Although what Respondent described cannot be seen on the video because he is on the other side of the car, what can be seen is how Respondent and Greco deployed themselves when they exited their vehicle. It was done smoothly and professionally. They knew what they were doing. Based on their experience and expertise as well as their testimony, I accept that Respondent and Greco approached the vehicle as they described and that Person A knew that Respondent was a police officer when he put the Hyundai in reverse and that he certainly knew that there were two police officers on the scene when he changed gears and sped forward.⁴

As I said at the outset, this issue of the officers' alleged failure to identify themselves was not raised on the first day of trial and the only issue was that of Respondent having fired at a moving vehicle.

Respondent for his part, states that as Person A put the car in reverse and backed out of the parking lot he believed that his partner, Greco, had his arm trapped in the passenger side window and was being dragged by the vehicle. He said he fired to prevent Greco from being seriously injured or killed as the car, with the engine revving, switched into drive and proceeded to speed forward.

In addition to the testimony of Respondent, Greco and Cosentino, there is a video taken by a store surveillance camera that captures the entire incident from a point in time before Respondent's vehicle is parked to a point in time after Person A and Cosentino fled the scene. There are also photographs of their car taken after they were apprehended with bullet holes in the windshield.

⁴ It is also worth noting that Spinosa testified that in his interview Goepel acknowledged that he knew Respondent was a police officer when he put the Hyundai in reverse.

The video gives a clear view of the incident but as with any video it covers the scene from one angle. As the video begins the Hyundai can be seen as the car next to it backs out. In the corner of the screen the Honda can be seen waiting for the spot. The Honda can be seen pulling in. Then two men enter the Hyundai. Some time goes by when the Respondent and his partner can be seen exiting the Honda.

In what appears to be a well-coordinated effort, Respondent walked around to the driver door of the Hyundai while Greco approached the passenger door of that vehicle. The car shot backward and Greco moved back with the car. What can be seen on the video is that Greco moved back at the same speed as the car. His left hand is on the roof of the car and his right hand near the passenger window. Greco was able to keep pace with the car because as it accelerated in reverse it was turning and pivoting on the rear wheels so Greco had less distance to move.

In my own first observation of the video, it did appear that Greco was being dragged. On the second viewing, I noticed that Greco was moving essentially sideways to keep up with the vehicle. It is possible to observe this because the video camera is taking its pictures from the right or passenger side of the Hyundai.

During this same period Respondent, who was on the driver's side, moved along with the vehicle at a slower pace so that he wound up near the front as the vehicle went back. Without having any possibility of seeing Greco's legs, as he was on the other side of the car, Respondent's claim that he believed Greco was being dragged is completely believable. Respondent was also hit by the vehicle as it sped backward and turned.

In her opening the Advocate said that Respondent placed himself in front of the

vehicle. Looking at the video it is less that he placed himself there than that he wound up there. Certainly Respondent can be seen pointing his firearm at the driver of the vehicle as the vehicle moves forward. It is at this point that the firearm is discharged. Respondent moves slightly out of the way as the Hyundai speeds past him out of the parking lot at high speed and into traffic. Respondent testified that as the vehicle moved forward he was hit by the side view mirror.

As the Hyundai moved forward, Greco can be seen separating from it; again, this is something that is readily visible from where the camera is situated.

Photographs taken of the Hyundai after the apprehension show two bullet holes in the windshield. One is close to the driver's side and another more to the middle. Although the trajectory of the bullets is not marked, looking at the way the glass is distorted it appears that the bullets, particularly the one nearer the center were travelling in the direction of the driver. Person A was grazed in the head by a bullet and also shot in the shoulder.

It is undisputed that Person A was arrested and convicted after a jury trial of two counts of attempted assault and drug possession. It is also undisputed that he was under the influence of drugs at the time of the incident. It is also undisputed that he is currently serving a sentence as a result of his felony convictions.

There are several observations that need to be made about this incident. The first is that the tactics employed by Respondent and Greco in attempting to make the arrest seem reasonable and proper.

Respondent observed a felony drug transaction in progress. He called and obtained authorization to act. He and Greco worked out a plan and carried it out. They moved quickly and efficiently into positions where they could safely exercise their authority.

As I have noted, there is every reason to believe that Person A was aware that Respondent and Greco were police officers. I believe Cosentino was also aware of that fact but it is less relevant as he was the passenger.

I also note that Respondent's use of his firearm was both controlled and restrained. Respondent fired four rounds. The two bullet holes in the windshield demonstrate that the shots were well aimed at the driver.

There is no evidence that Respondent shot at the fleeing vehicle. In other words he stopped firing when he realized that Greco was not in danger. He did not fire out of anger or frustration. He did not empty his magazine.

Another point worth making is what appears to be the Department's view of both the incident and the Patrol Guide rule. Although the Department did not ask that Spinosa be deemed an expert, it used her experience to explain the Department's theory of how the rule was violated. Among the things she testified to was her belief that the Patrol Guide rule could have been satisfied if Respondent had sought cover and concealment. She also suggested that the Respondent "could have let the vehicle leave and put over a description over the radio."

This argument would make sense if Respondent had fired the weapon to defend himself. Respondent's testimony is that he believed that Greco was in danger of being dragged by the vehicle. As I have already noted, I find that testimony credible.

In her closing argument, the Advocate claimed that Respondent should have realized that Greco was not in danger because he did not call for help. She further argues that Respondent could have seen that Greco was separated from the car by the time he started to fire because at that point he was on the passenger side of the car.

These are fine arguments to make in a courtroom after quiet contemplation of the situation, but they ignore the reality of a fast moving situation. Using the digital clock on the video, it would appear that no more than six seconds went by from the time Respondent approached the driver's side door until the first shot (13:42:13 to 13:42:19). At that point, Respondent was in front of the vehicle and Greco was still in the same position relative to the Hyundai and he was still holding the roof of that vehicle.

The Department has a compelling interest in minimizing police involved shootings. The guidelines are a part of the effort to achieve that goal. The Department offered Respondent a penalty involving the loss of 15 vacation days. This offer struck me as inadequate for a near-fatal shooting that the Department contends violates its rules for the use of firearms.

As Spinosa noted, and as is plain on the video, there was ample opportunity for Respondent to move away from the Hyundai as it shifted gears to speed forward. If the Department's position, as it seems to be from Spinosa's testimony, is that Respondent was not acting to protect Greco, then Respondent violated another important rule which would have been that he was firing at a fleeing felon (see Patrol Guide 203-12 (d)). Further, if Respondent was not acting to protect Greco, then his conduct in firing what clearly could have been fatal shots would not have been justified under the Penal Law and Respondent could have been subject to criminal prosecution. The parties agree that Respondent was

not subject to any criminal charges and indeed the Richmond County District Attorney wrote a letter (RX C) commending Respondent and Greco for their work in this case.

There is no doubt that Respondent fired four rounds at a moving vehicle and that the only weapon being used by the perpetrators was the vehicle. There is thus no question that on the face of it, Respondent has violated Patrol Guide 203 12 (g).

The only question is whether the rule is absolute or if extraordinary circumstances warrant an exception.

As I have previously noted, the established facts are that Respondent reasonably believed that he had to act to prevent his partner from suffering serious physical injury or death. He had only a few seconds in which to make the decision. He fired with restraint, discharging only four rounds and ceasing when he realized that his partner was not in danger.

There is no rule mandating that police officers use force, including deadly physical force, to preserve human life but a police officer is expected to take police action when called for. Patrol Guide 203-12 (a) provides that deadly physical force can be used to protect human life when there is a threat of imminent death or serious physical injury, meaning that it is acceptable for a police officer to use his or her firearm for that purpose.

Respondent was placed in a situation where he faced something of a conflict between his responsibility as a police officer to act to preserve human life, coupled with the authorization to use deadly physical force to accomplish that under Patrol Guide 203-12 (a) on the one hand, and the provisions of Patrol Guide 203 12 (g) on the other.

Under all of the unique and extraordinary circumstances of this case, Respondent acted as a reasonable police officer and should not be penalized for his action. Respondent is therefore found Not Guilty.

Respectfully submitted,


Martin G. Karopkin
Deputy Commissioner - Trials

